

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HERBERT T. PATTY,
Plaintiff,

v.

ROB BONTA, et al.,
Defendants.

Case No. 25-cv-04392-NW

**ORDER GRANTING ANTI-SLAPP
SPECIAL MOTION TO STRIKE**

Re: ECF No. 35

Defendants Heather Allan and Allan & Martelle, LLP (together, “Allan Defendants”) filed a special motion to strike Plaintiff Herbert T. Patty’s first amended complaint pursuant to Cal. Civ. Proc. Code section 425.16, California’s anti-SLAPP statute.¹ Mot. to Strike, ECF No. 35. The Allan Defendants ask the Court to “enter a finding that Attorney Allan and her firm are prevailing parties,” under section 425.16. While the Allan Defendants’ motion was pending, Plaintiff filed a second amended complaint and voluntarily dismissed the Allan Defendants. The Court retains jurisdiction over a pending special motion to strike, even after the defendants have been dismissed, for the purpose of designating a “prevailing party” and to award fees and costs. *Evans Hotels, LLC v. Unite Here! Loc. 30*, No. 23-55692, 2025 WL 17120, at *3 (9th Cir. Jan. 2, 2025), *cert. denied*, No. 24-1173, 2025 WL 2906506 (U.S. Oct. 14, 2025).

Having considered the parties’ briefing and the relevant legal authority, the Court finds this matter suitable for resolution without oral argument. Civil Local Rule 7-1(b). The Court GRANTS the Allan Defendants’ special motion to strike and finds that they are prevailing parties.

¹ “SLAPP” is an acronym for Strategic Lawsuits against Public Participation.

I. PROCEDURAL HISTORY

This case arises out of two proceedings in Santa Clara County Court against Plaintiff Herbert T. Patty: (1) a criminal case, *People v. Herbert Theodore Patty* (No. B2303008), and (2) a family court case, *Kalila Spain v. Herbert Patty* (No. 23FL002984). Compl., ¶ 1, ECF No. 1. Both state court cases stem from Plaintiff's divorce proceedings and his related interactions with his former spouse and his children. *Id.* ¶ 2. Plaintiff is an attorney licensed in California. *Id.* ¶ 16. He is proceeding *pro se* in this case.

On May 22, 2025, Plaintiff brought a series of 42 U.S.C. §§ 1983, 1985 claims and state law claims against the state court judges presiding over his state court proceedings, members of the District Attorney's office, the County of Santa Clara, and the Attorney General of California. *See* Compl. Plaintiff additionally sued Defendant Heather Allan, the attorney appointed as Plaintiff's minor children's counsel in the state court proceedings, for alleged violation of Plaintiff's due process and equal protection rights under the Fourteenth Amendment.

Plaintiff filed a first amended complaint on August 26, 2025, in which Plaintiff added Allan's firm, Allan & Martelle, LLP, as a Defendant. *See* First Amend. Compl., ECF No. 25 ("FAC"). Plaintiff alleged that the Allan Defendants violated his children's right to parentage and Plaintiff's due process rights under the Fourteenth Amendment. Plaintiff also added state law claims for abuse of process, and aiding and abetting misconduct. *Id.*

The Allan Defendants filed a motion to strike Plaintiff's claims pursuant to Cal. Civ. Proc. Code § 425.16, California's anti-SLAPP statute. Mot. to Strike at 1. Plaintiff opposed, and the Allan Defendants filed a reply. ECF Nos. 54, 63.

On October 16, 2025, the Court granted four motions to dismiss filed by the other Defendants in this action and the motion to dismiss filed by the Allan Defendants. The Court found that Plaintiff's complaint did not articulate causes of action in a manner in which the Defendants could reasonably answer. The Court granted Plaintiff leave to amend, but noted that Defendants had raised a variety of compelling arguments in their motions that the Court had not yet addressed, including: the lack of state action alleged in Plaintiff's § 1983 claims; the lack of a state policy alleged in Plaintiff's *Monell* claim; Plaintiff's failure to exhaust administrative

requirements before suing state government employees; and, Plaintiff's claims against County prosecutors and judicially appointed therapists and advocates are barred by doctrines of immunity.

Plaintiff filed a second amended complaint on November 7, 2025. Second Amend. Compl., ECF No. 70 ("SAC"). In the SAC, Plaintiff voluntarily dismissed all claims against the Allan Defendants. *Id.* ¶ 284.

II. DISCUSSION

A plaintiff who voluntarily dismisses their complaint after an anti-SLAPP motion has been filed, "cannot escape paying attorney fees and costs if the court determines the motion would have been granted." *Astre v. McQuaid*, No. A154945, 2019 WL 5654260, at *5 (Cal. Ct. App. Oct. 31, 2019) (unpublished). "[P]ermitt[ing] an eleventh-hour dismissal to eliminate financial liability would undermine the deterrent purpose of the anti-SLAPP statute." *Ross v. Seyfarth Shaw LLP*, 96 Cal. App. 5th 722, 733 (2023), *reh'g denied* (Oct. 17, 2023), *reh'g denied* (Nov. 8, 2023), *review filed* (Nov. 21, 2023), *review denied* (Jan. 10, 2024).

The Court retains jurisdiction to determine if the Allan Defendants would have prevailed on their motion to strike such that they are able to recover attorneys' fees. "Where a plaintiff abandons its claims after the defendant files an anti-SLAPP motion, the defendant is entitled to fees and costs if it would have prevailed on the merits of its motion." *Evans Hotels*, No. 23-55692, 2025 WL 17120, at *3 (citing *Moore v. Liu*, 81 Cal. Rptr. 2d 807, 812 (Cal. Ct. App. 1999)). "To prevail on a special motion to strike a SLAPP suit, [1] the defendant must 'make an initial prima facie showing that plaintiff's suit arises from an act in furtherance of defendant's right of petition or free speech.' If this burden is met, [2] the plaintiff must establish a reasonable probability he or she will prevail on the merits." *Ross*, 96 Cal. App. 5th at 732 (quoting *Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036, 1042–1043). "Preadjudication dismissals do not automatically render the defendant the 'prevailing party' for purposes of subdivision (c)(1). But upon a determination that the defendant *is* the prevailing party, the fee award becomes mandatory (subject to limitations on an award in the context of a fully adjudicated motion)." *Id.* at 733.

Here, the Allan Defendants have made a prima facie showing that Plaintiff's claims arise

from acts that are protected by the anti-SLAPP statute. Actions such as “any written or oral statement or writing made before a . . . judicial proceeding, or any other official proceeding authorized by law,” are covered by the anti-SLAPP statute. Cal. Civ. Proc. Code § 425.16(e)(1). “[A]ll communicative acts performed by attorneys as part of their representation of a client in a judicial proceeding or other petitioning context are per se protected as petitioning activity by the anti-SLAPP statute.” *Cabral v. Martins*, 177 Cal.App. 4th 471, 480 (2009). Plaintiff’s claims against the Allan Defendants stem from the Allan Defendants’ representation of, and recommendations for, Plaintiff’s minor children during the underlying state court proceedings. The Allan Defendants’ alleged actions are litigation related activities that fall squarely within the conduct protected by the anti-SLAPP statute.

Because the Allan Defendants have met their initial burden, Plaintiff “must establish a reasonable probability [that he] will prevail on the merits.” *Ross*, 96 Cal. App. 5th at 732. The Court finds that Plaintiff has not demonstrated that he had a reasonable probability of prevailing on the merits of his claims against the Allan Defendants. Plaintiff did not address the Allan Defendants’ federal and state litigation privileges, which encompass all of their activities. Under California law, a “publication or broadcast” made as part of a “judicial proceeding” is privileged. Cal. Civ. Code § 47(b) (West). “The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that [has] some connection or logical relation to the action. The privilege is not limited to statements made during a trial or other proceedings, but may extend to steps taken prior thereto, or afterwards.” *Action Apartment Assn., Inc. v. City of Santa Monica*, 41 Cal. 4th 1232, 1241 (2007) (internal citations omitted). Similarly, under the federal *Noerr–Pennington* doctrine, “in the litigation context, not only petitions sent directly to the court in the course of litigation, but also ‘conduct incidental to the prosecution of the suit’ is protected.” *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 934 (9th Cir. 2006) (quoting *Columbia Pictures Indus., Inc. v. Prof’l Real Estate Investors, Inc.*, 944 F.2d 1525, 1528–29 (9th Cir.1991)); see also *Litrinium, Inc. v. MACOM Tech. Sols. Inc.*, No. 19-1674-JVS, 2020 WL 4580506, at *6 (C.D. Cal. Apr. 27, 2020) (“Immunity under the *Noerr–Pennington*

1 doctrine includes communications made to the court during the course of a lawsuit.”). Plaintiff
2 challenges the Allan Defendants’ statements and conduct related to Allan’s representation of
3 Plaintiff’s children in the underlying state court cases. Because the Allan Defendants’ alleged
4 conduct was made during and for the purpose of judicial proceedings, Plaintiff’s claims against the
5 Allan Defendants are barred by the litigation privileges under state and federal law. Plaintiff has
6 not met his burden to show that he had a reasonable probability of prevailing on the merits of his
7 claims against the Allan Defendants, prior to dismissing them from the SAC.

8 **III. CONCLUSION**

9 The Court GRANTS the Allan Defendants’ special motion to strike and FINDS that the
10 Allan Defendants are prevailing parties for the purposes of § 425.16.

11 If the Allan Defendants intend to seek reasonable attorneys’ fees, they must do so by
12 motion by December 15, 2025. Plaintiff may file an opposition within 14 days of the date the
13 motion is filed per the Civil Local Rules.

14 **IT IS SO ORDERED.**

15 Dated: November 28, 2025



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17 Noël Wise
18 United States District Judge
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